United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

ORIGINAL

77-2053

To be argued by
HENRY J. STEINGLASS

United States Court of Appeals

For the Second Circuit

JOHN SUGGS,

Petitioner-Appellee,

against

J. EDWIN LaVALLEE,

Respondent-Appellant.

On Appeal from the United States District Court for the Southern District of New York

REPLY BRIEF FOR RESPONDENT-APPELLANT

ROBERT M. MORGENTHAU
District Attorney
New York County
Attorney for Respondent-Appellant
155 Leonard Street
New York, New York 10013
(212) 732-7300

PETER L. ZIMROTH
HENRY J. STEINGLASS
Assistant District Attorneys
Of Counsel

UNITED STATES COURT OF APPEALS
FILED
AUG 29 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

77-2053

UNITED STATES COURT OF APPEALS

For the Second Circuit

JOHN SUGGS,

Petitioner-Appellee,

against

J. EDWIN LaVALLEE,

Respondent-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

REPLY BRIEF FOR RESPONDENT-APPELLANT

In order to grant petitioner relief below, the District Court had to, and did in fact, ignore entirely the state court's determination that Suggs was competent when he pleaded guilty. In our main brief we argued that the decision to ignore the state court's determination violated fundamental principles of federalism and comity (Point I).

Suggs has now submitted a lengthy brief in response. He has not offered any significant support for this ruling by the District Court. In fact, Suggs concedes that the evidentiary hearing

upon which the state court based its determination, and in which he fully participated without objection, was a "full blown" hearing on the issue of competency. (Suggs Br., p. 28). He also concedes that the District Court, in requesting that a hearing be held in the state court, did not articulate "outer perimeters" (Suggs' Br. 26) to the scope of the state court hearing.

Nonetheless, Suggs asks this Court to rule that, after the state court had held a full and fair hearing and made its determination that Suggs was competent at plea, it was "quite appropriate" for the District Court to ignore the state court's determination. The District Court's decision is defended on the ground that since the District Court "intended" only a narrow reference, the state court's decision was "ultra vires." (Suggs' Brief, p. 54). Suggs' position is completely contrary to fundamental principles of federalism and comity governing the relationship between the state and federal courts (see the State's main Brief, pp. 36-40).*

Apparently recognizing the weakness of this position, Suggs attempts to rescue the result below on the alternative theory that the District Court acted within its discretion in deciding that "highly significant additional evidence, not available to the state court, was elicited at the federal hearing" and warranted the District Court in reaching the result that it did. (Suggs' Brief, at p. 54)

---

*Sugg's Brief does not even mention the District Court's alternative rationale that the absence of Justice Gold, who recalled nothing of Suggs or any proceeding concerning Suggs, warranted ignoring the state court's determination of the competency issue (See pp. 40-41 of the State's main Brief).

This theory is entirely new to this case. In the District Court, Suggs did not ask for a hearing or for ultimate relief on the theory that he had new evidence. When the District Court nevertheless granted him a federal hearing, he introduced no significant new evidence. And, in granting habeas relief, the District did not find that there had in fact been any "new" or "signifi evidence introduced at the federal hearing, and the District Court did not exercise any discretion, or base any of its conclusions, on the view that there was any such evidence. The District Court's ruling that Suggs was competent was based largely on evidence received at the state court hearing. The District Court simply decided to give the state court factual determination no weight whatsoever, on the theory that the District Court had not "intended" that the state court act as a court of coordinate jurisdiction and decide the factual issue in the case.

The important evidence on the issue of competency was introduced at the state court hearing where there was extensive live testimony from the defense attorney and prosecutor at plea, and from the three psychiatrists who examined Suggs before and after the plea, and where extensive psychiatric records were introduced. Represented by the same attorney as at the federal hearing, Suggs vigorously litigated the issue of competency at the state court hearing. Contrary to the claim now made on appeal, the evidence introduced at the federal hearing was not "sig-

nificant new evidence" (Suggs' Br., p. 36)*

1) Stipulated testimony of Justice Gold (Suggs' Exh. G)

Though listed as "significant new evidence" (Suggs' Br., p. 36), the sum total of Justice Gold's stipulated testimony was that Justice Gold recalled nothing of Suggs or of any proceeding concerning Suggs.

2) The minutes of the proceeding on November 6, 1968 (Suggs' Exh. H, 132a-136a), and the order of commitment to Matteawan (Suggs' Exh. "I")

On November 6, 1968, nearly two months after the plea, on the basis of a two-sentence request by Suggs' counsel, and upon consent and without discussion, Suggs was ordered committed as incompetent (136a). No hearing was held (see State's main Br. 9 and 2d footnote).

The commitment order itself (Suggs' Exh. "I"), which noted that the commitment was on consent and without a hearing (see State Br. 9, 2d footnote) was before the state court as part of the court file, and was mentioned in closing argument by Suggs' counsel (St. Tr. 198). The four pages of minutes of the proceeding (Suggs' Exh. H, 132a-136a) contain no discussion of Suggs' mental condition.

---

*The evidence now claimed by Suggs to be "significant new evidence" is listed at pp. 36-37 of his Brief.

3) Legal Aid file (Suggs Exh. L)

Suggs lists as "significant new evidence" at the federal hearing (Suggs Br., p. 36), the Legal Aid Society's file for Suggs, which contained notes by Mr. Tucker (defense counsel at the plea) and other Legal Aid attorneys. In fact, by order of the state court, Suggs had this file at the state court hearing, and used it to question Mr. Tucker, who testified at the state court hearing that from his discussions and observations of Suggs at the plea, Suggs was competent at that time (see the State's main Br., pp. 27-28, and p. 27, 2d footnote). Suggs chose not to introduce the file itself at the state court hearing.

At the federal hearing, Suggs introduced this file into evidence and again questioned Mr. Tucker about it. Mr. Tucker had little to add to his testimony at the state court hearing,*

---

*The testimony elicited by Suggs at the federal hearing confirmed Mr. Tucker's testimony in the state court hearing that Suggs had admitted his guilt of the crimes with which he was charged. In addition, the Legal Aid file indicated that not only Mr. Tucker but other Legal Aid attorneys who had represented Suggs in 1968 had found him to be competent. (see the State's main Br., pp. 27, 28).

4) The Matteawan records (Suggs' Exh. F)

The records of Suggs' commitment to Matteawan from November 15, 1968 (two months after his guilty plea) until April 10, 1969, were not "unavailable" to the state court. These records had been subpoenaed by Suggs for the state court hearing and were used at that hearing by Suggs in the questioning of Dr. Lubin (see St. Tr. 95). Suggs chose not to introduce these records into evidence at the state court hearing, perhaps because these records suggested that Suggs may have feigned incompetency when he was examined by Dr. Lubin following his guilty plea (see the State's main Br. p. 30, 1st footnote).

Without introducing the Matteawan records, Suggs' counsel nevertheless informed the State court that Suggs had been considered incompetent while at Matteawan and had later been returned as competent (see St. Tr. 95). In addition, the state court had before it as part of the court file a report from the Superintendent of Matteawan noting that Suggs had been diagnosed there as psychotic, and that he had been treated there and returned as "improved."* Thus, the state court had before it the facts concerning

---

*Copies of the Superintendent's communication to the state court are included as Exhs. G and H to Suggs' "Motion to Remove Action from Suspense Calendar," etc., dated April 19, 1974 (Doc. No. 33 on the record on appeal).

Suggs' diagnosis and treatment at Matteawan which Suggs now relates in his Brief (p. 18) and which the District Court refers to in its decision (123a, 128a).*

5) The Rockland State Hospital records (part of Suggs' Exh. F)

Suggs' Brief refers to certain records of Rockland State Hospital from 1963, when Suggs was 12 years old, as "significant new evidence" (Suggs' Br. p. 36, see pp. 3-4). These records were not "new." Indeed, these Rockland State records, which Suggs now refers to, were included as part of the Matteawan records (Suggs' Exh. F) which Suggs subpoenaed to the state court hearing and chose not to introduce there (see above, p. 6).

Moreover, the Rockland State records from 1963 are clearly peripheral to the issue of Suggs' competence five years later when he pleaded guilty on September 13, 1968. Not only was there extensive evidence of Suggs' mental condition on the date of the plea itself, but there was also extensive psychiatric evidence from within a few weeks of the plea. Notably, in closing argument at the state court hearing Suggs' counsel concentrated on the psychiatric

*Drs. Messenger, Lubin and Kadar unanimously agreed that Suggs' mental condition may have fluctuated betweeen the time of their examinations in July and October 1968 so that Suggs could have been competent at some times and not competent at other times during that period (see the State's main Br. 29). Thus, the fact that during some later period (November 15, 1968 to April 10, 1968), Suggs was considered psychotic, offers little support to the claim of Suggs' competency at the time of the plea.

evidence from within a few weeks of the plea. He did not urge Suggs' mental condition as a child in 1963 in support of the claim of incompetence at plea five years later, although there were other documents before the state court, besides the Rockland State records he now refers to which contained substantial information about Suggs' childhood.* Indeed, in the argument at the State court hearing, Suggs' counsel did not even mention records of Suggs' three week stay at Bellevue in 1965, when he was 14, which were them-

*The communications from Matteawan which were part of the court file (see above, p. 6) set forth the diagnosis made at Rockland State (see Suggs' Br. 4). Suggs' Exh. C. (39th page) at the state court hearing also refers to a diagnosis made at Rockland State ("schizophrenia"), which was actually erroneous in Suggs' favor. The Rockland State records themselves merely speculate that "perhaps he may be ultimately a schizophrenic" (Exh. F., 50th page, under date of Sept. 3, 1963; the emphasized word is omitted in the quotation from this material at Suggs' Br. p. 4). The State's Exh. 4 at the State court hearing (Dr. Messenger's notes) summarizes Suggs' childhood history, including Suggs' conduct at Wiltwyck School before 1963 which Suggs' Brief (p. 4) uses the Rockland State records to describe.

selves in evidence at the state court hearing (Suggs' Exh. C, 23rd to 43rd pages).*

---

*In view of Suggs' present discussion of the 1965 Bellevue records, we note the following items from these records which Suggs' Brief does not mention:

> "final diagnosis - Passive Aggressive Personality" (23rd page)
>
> "psychiatric examination ... no bizarre ideation, no ideas of reference, no hallucinatory behavior - not psychotic at present (25th page)
>
> "discussed at dispositions conference - personality pattern disorder - emotionally unstable person - disp. State training school" (33rd page)
>
> "He is not hallucinatory ... not paranoid, and evidences no psychotic behavior." (36th page)
>
> "I do not see him as a psychotic youngster as yet" (37th page) (Suggs' Br. 5 quotes the sentence following this one)
>
> "There is little evidence of gross perceptional distinction, there is no impairment of thinking, he is aware of what is expected of him, and his judgment in regard to dealing with most situations is adequate." (39th page - this last item is from the report of the psychologist which is quoted at Suggs' Br. 5).

6) The 1968 psychiatric clinic records (Suggs' Exh. O)

Contrary to Suggs' claim that this exhibit is "significant new evidence" (Suggs' Br., p. 36), the contents of this file were actually introduced into evidence in the state court hearing, as State Exhs. 1, 3, and 4.*

7) Corrections records (Suggs' Exhs. J and K)

Introduced at the federal hearing, correction records of Suggs' incarceration in 1968, contained a possible suicide note by Suggs about August 1, 1968 and also showed that Suggs behavior was normal when observed at half-hourly intervals for a week thereafter (see the State's main Br., pp. 28-29).** These records could

---

*The file contained Dr. Messenger's report of July 23, 1968 (State Exh. 1), a psychologist's report and accompanying notes and tests (State Exh. 3), and Dr. Messenger's notes (State Exh. 4). These exhibits were introduced at the federal hearing with the same exhibit numbers. Suggs' Exh. O is another copy of the same records.

**The psychiatric social worker who saw Suggs on August 2, 1968 indicated that Suggs stated he attempted to hang himself (Suggs' Exh. K, memo of 8/2/68 by Warren A. King), not that he actually attempted to do so as Suggs' Br., at p. 7, suggests. And, there is no basis for the speculation in Suggs' Brief that at that time Suggs "may have been under a delusion about his parents because his mother had died several years earlier and he had never known his father" (Suggs' Br., p. 8, n.) The reference to "parents" could easily have referred to the guardian who raised him since childhood, who is called his "mother" in some of the corrections records (Suggs' Exh. J, see e.g., 1st, 3rd, and 6th pages) and his "guardian" in others (see Suggs' Exh. K)

have been but were not subpoenaed by Suggs at the state court hearing. The state court was aware, however, through Dr. Messenger's testimony, of past conduct by Suggs that had been termed suicide activity, and that, despite the emotional instability which that indicated, Suggs was in contact with reality and was competent (see the State's main Br., pp. 20-21, see also p. 35, 2d footnote, continuing on p. 36).

8) Dr. Kinzel's testimony

Dr. Kinzel, who first saw Suggs in January 1977, more than eight years after the plea, gave an opinion at the federal hearing which was contrary to the evidence from the three psychiatrists who examined Suggs within weeks of his 1968 plea. Dr. Kinzel's opinion was based on the story Suggs told him in 1977 that he had "lost his memory" during all of 1968, a story that was utterly incredible in view of the evidence showing Suggs' excellent recollection of numerous events in 1968, including his crimes. (see the State's main brief, 29-31, 43-44).

This singularly unpersuasive testimony was hardly "unavailable" if Suggs had considered it significant enough to present at the state court hearing.*

* * *

---

*Suggs retained Dr. Kinzel as a witness at the federal hearing in forma pauperis (Suggs' Exh. M). At the state court hearing, Suggs made no request to obtain the services of a psychiatrist.

In sum, there was no "significant new evidence" at the federal hearing. The important evidence in this case was before the state court, which found Suggs to be competent at plea. The District Court violated fundamental principles of federalism and comity in entirely ignoring the state court's determination of that factual issue.

Respectfully submitted,

ROBERT M. MORGENTHAU
District Attorney
New York County
Attorney for Respondent-Appellant
155 Leonard Street
New York, New York 10013
(212) 732-7300

PETER L. ZIMROTH
HENRY J. STEINGLASS
Assistant District Attorneys
Of Counsel

August , 1977

Service of 3 copies of the
within Brief is hereby
admitted this 29th day of
August 1977 at 4:30 pm
Signed E. Clerb for J.A.P., Jr.
Attorney for Petitioner-Appellee

307 BAR PRESS, Inc., 132 Lafayette St., New York 10013 – 966-3906
(6344)